



in Finding No. 102 in the Amended Final Decision and Order, Jenny Hudson testified on behalf of Staff that Keystone's planning and preparation of the IMP were fully compliant with PHMSA regulations. There has been no change in conditions that would require relitigating that finding. As for SCADA specifications related to each spill, the request is not reasonably calculated to lead to the discovery of admissible evidence. Keystone provided additional information related to its SCADA system in response to Interrogatory No. 71.

**2. Interrogatory Nos. 8, 12, 13, 15, 16, 17, 26, 30, 33, 34, and 40.**

DRA argues in support of its motion that it seeks internal forecasting information from Keystone, which it must have, to assess "whether or not the Pipeline is truly necessary." As Keystone stated in its objection, that is part of the National Interest Determination to be made by the Department of State in considering the Presidential Permit application. It is not a part of Keystone's burden of proof under SDCL § 49-41B-22. Moreover, Keystone is not required to meet its original burden of proof in this proceeding, which is statutorily limited by SDCL § 49-41B-27 to whether there are changes since 2010 that impair Keystone's ability to meet the conditions on which the permit was granted. In its objection and response, Keystone also cited to oil forecast information that it relied on in Appendix C to its certification. DRA does not acknowledge these documents or explain their insufficiency. Finally, DRA fails to explain the relevance of additional forecasting given that Keystone has binding shipper commitments for the Keystone XL Pipeline, which establishes beyond dispute that there is market demand for the project.

**3. Interrogatory No. 21.** DRA asked a hypothetical question about what would happen if Keystone failed to design, construct, test, or operate the Keystone XL Pipeline in accordance with the 59 special conditions imposed by PHMSA. Keystone objected, but also responded that

unless and until the Department of State issues a Record of Decision and a Presidential Permit, the recommendations are not binding on Keystone. DRA does not like the answer, but cannot change the facts. Nor can DRA contest that it is PHMSA's responsibility to enforce Keystone's compliance with the special conditions. If Keystone were to violate the special conditions or any other conditions of the Presidential Permit, the Department of State could revoke the permit. Further discovery on this issue is not reasonably calculated to lead to the discovery of admissible evidence in this limited proceeding.

**4. Interrogatory No. 23.** In addition to information that Keystone provided regarding leaks and spills, DRA asks specifically for "a range of dates in association with each spill during which crude oil transportation was disrupted." Keystone will supplement its response with the dates and times that the Keystone Pipeline was shut down due to incidents at the Roswell, Freeman, David City, Ludden, and Severance Pump Stations.

**5. Interrogatory No. 25.** DRA wants to know whether TransCanada has "adequate data security systems and controls in place." Keystone objected to providing details of its security systems for safety and security reasons. Keystone will supplement its response with information about TransCanada's internal policy related to data security.

**6. Interrogatory No. 40.** DRA objects to Keystone's response to its request that it "describe the potential for pipeline transportation to replace rail transportation for shipments from the WCSB and the Williston Basin to PADDS 1 and 5." Keystone's objection to relevance is essentially the same as its objection with respect to demand information outlined in its second response, above. Further information specific to rail transportation is contained in Sections 2.2 and 5.1 of the Final Supplemental Environmental Impact Statement. An exhaustive analysis

related to DRA's question has been done in connection with the Presidential Permit. DRA's motion does not establish that any additional discovery is necessary in response to its request.

**7. Interrogatory No. 48.** DRA sought information related to potential damage that could be caused due to the high-swelling potential of the Cretaceous and Tertiary rocks located in the Missouri River Plateau due to susceptibility to land instability, including landslides. Keystone responded to this request, which DRA does not acknowledge. Keystone referred DRA to the discussion of this issue and the information available in Sections 3 and 3.5 of Appendix A of the 2009 Keystone XL Risk Assessment. Keystone also included in its answer information from Table 3.1-6 showing the locations in South Dakota with high-risk landslide potential. DRA does not argue that this information was either not responsive or insufficient. Moreover, Keystone responded that its Integrity Management Program would address the issue as required by 49 CFR Part 195. Keystone did not object that South Dakota geology is a secret, as DRA argues. Keystone did object that the volume and location of its worst-case spill scenario are confidential. As evident in Appendix P to the FSEIS, Appendix B to the Risk Assessment for Keystone XL contains this information, but the Department of State redacted it as confidential. DRA does not explain why that particular information is relevant or must be disclosed.

**8. Interrogatory No. 56.** DRA again seeks information related to the volume and location of worst-case spill scenarios related to three river crossings. Keystone objected that the information was confidential, and again refers to the fact that the Department of State redacted it when publishing the Risk Assessment as part of the FSEIS. To the extent that DRA maintains that the information is necessary because of a risk analysis done by John Stansbury in connection with the FSEIS, Keystone responded to Dr. Stansbury's analysis in a submission to the

Department of State prepared by Meera Kothari, Jesse Bajnok, and Heidi Tillquist. Keystone will supplement its response to provide a copy of its response to the Department of State.

**9. Interrogatory No. 57.** DRA seeks information related to worst case spill scenarios which could occur in river crossings and flood protection levees. Keystone responded to the request for worst-case spill details for the same reasons argued in Interrogatory Nos. 48 and 56. Keystone also responded to the request with specific information that DRA does not acknowledge in its motion. DRA does not argue why the information provided is not responsive or sufficient.

**10. Interrogatory No. 58.** DRA's interrogatory contained four subparts. Keystone answered subparts (a) and (b). DRA accuses Keystone of playing "hide the ball," but in response to the request to explain the leaks and spills on the Keystone Pipeline since 2008, Keystone identified each by date and location, and summarized in part with this explanation: "The small number of leaks that have occurred on the pipeline have had nothing to do with the integrity of the pipe itself. They have all occurred at our pump stations and other above-ground facilities and have been related to leakage from small-diameter fittings and seals. They have all been cleaned up with no environmental impact." This answer is responsive, and DRA does not explain what additional information the Commission should compel Keystone to provide. Keystone objected to subpart (c) asking for the location of the worst case scenario discharge due to confidentiality, as explained above. It objected to subpart (d) asking for responsive documents as overbroad and unduly burdensome given the thousands of pages of documents supporting Keystone's spill risk assessment.

**11. Interrogatory No. 60.** DRA asked Keystone to describe the impact of a worst-case scenario spill into the aquifers in Tripp County. Keystone objected that the location of a worst-

case spill is confidential, as explained above, but otherwise answered the interrogatory at length. Keystone respectfully asks the Commission to compare Keystone's answer at pages 54-57 of Exhibit 1 to DRA's motion, with DRA's argument. Keystone's response was detailed and sufficient.

**12. Interrogatory No. 76.** In response to DRA's request for a copy of Keystone's integrity management plan showing the locations where slope instability poses a potential threat to the pipeline, Keystone asserted its previous objection based on the confidentiality due to its integrity management plan according to PHMSA and the Commission in Condition 36. Keystone otherwise answered DRA's request to identify the locations where slope instability poses a potential threat of ground movement along the project route by referring to Sections 3.1.2, 3.1.2.5, and 4.1.3.4 of the FSEIS, and specifically Table 3.1-6, where that issue is discussed. Rather than arguing that "perhaps [Keystone] should not be in the pipeline business," DRA should have focused its attention on the data in the FSEIS, which is responsive to its question. In addition, DRA should refer to Keystone's answer to Interrogatory No. 61 related to geologic conditions in South Dakota, to which DRA did not object, which is also partially responsive to Interrogatory No. 76.

**13. Interrogatory No. 83.** DRA asked Keystone to identify the most recent Integrity Management Plan submitted to the Commission and other appropriate agencies. Keystone asserted its objection based on the confidential treatment of the IMP. Keystone's most recent IMP filed with the Commission is located in Docket HP07-001. It was filed on August 7, 2009, as a confidential filing.

**14. Document Request No. 9.** DRA asked Keystone to identify "all documents concerning TransCanada's decision to use API SL X70M high-strength steel." Keystone objected that the

request for “all documents” was overbroad and burdensome. Keystone also responded with an explanation that DRA does not address. DRA argues that it is entitled to “discovery details concerning pipeline components and materials,” but that is a different request than was made. Nevertheless, Keystone will supplement its response with a copy of Exhibit C to its Presidential Permit Application, which provides additional details on pipe specifications and the design factor determination. In essence, Grade X70 is the standard grade type for high strength steel and is therefore commonly selected for modern large-diameter pipelines. Material Grade is determined by evaluation of various factors, including, but not limited to, field weldability, construction equipment size, transportation capability, manufacturing mill availability, and global steel pricing.

**15. Document Request No. 10.** DRA asked for “all documents” relating to the decision to use Fusion Bond Epoxy coating for the pipeline. Keystone objected that the request was overbroad and unduly burdensome, including to the extent that it sought communications between TransCanada and the manufacturer of the coating. Exhibit C to the Presidential Permit Application, which is referred to above, also addresses coatings. Fusion Bond Epoxy is the industry standard for pipeline corrosion prevention.

**16. Document Request No. 12.** DRA seeks all documents showing the location of power lines for pumping stations and the location of proposed pumping stations and mainline valves in South Dakota. Keystone objected, but has recently provided an elevation profile to the Rosebud Sioux Tribe that shows the locations of pump stations and mainline valves. Keystone will supplement its response to make the elevation profile available to DRA. Otherwise, Keystone stands on its response, which referred DRA to Section 2.1.12.3, Electrical Distribution Lines and Substations, of the FSEIS.

**17. Document Request No. 13.** DRA seeks “all documents” concerning compliance with PHMSA regulations and conditions, including Keystone’s communications with federal regulators. Keystone objected that the request was overbroad and unduly burdensome. DRA acknowledges that its request “may indeed produce a large volume of documentation,” which is an understatement. As the Commission found in Conclusion of Law ¶ 12, “PHMSA is delegated exclusive authority over the establishment and enforcement of safety-oriented design and operational standards for hazardous materials pipelines.” If Keystone fails to comply, the Commission can revoke Keystone’s permit. Keystone’s objection is valid.

**18. Document Request No. 26.** DRA asks for all documents concerning the failure of FBE coating referred to in the update to Finding No. 68. Keystone responded by explaining the situation, which occurred in a shared pipeline corridor due to stray current interference from a foreign utility. No similar situation exists in South Dakota. Because no similar situation exists, documents related to the incident are not relevant or likely to lead to the discovery of admissible evidence.

**19. Document Request No. 28.** DRA seeks “all documents” concerning TransCanada’s decision to use horizontal directional drilling. Keystone provided an answer, but not documents. Keystone does not have documents explaining the rationale for its decision to use HDD at particular locations. The basis for using HDD, however, is explained in Section 2.1.9.2 of the FSEIS.

**20. Document Request No. 29.** DRA asked for forecasts and projections of tax revenue. Keystone has produced an itemization of taxes it has actually paid in South Dakota. DRA objects that this is insufficient, but Keystone does not have documents forecasting South Dakota

tax revenues from the Keystone XL Pipeline. Keystone included an estimate of tax revenues with its 2009 permit application, and explained its tax calculation in that context.

**21. Document Request No. 30.** DRA seeks “all documents evidencing TransCanada’s or its Affiliates’ compliance efforts with applicable laws and regulations related to construction and operation of the Project.” Keystone maintains its objection that this request is obviously overbroad, unduly burdensome, and cannot be complied with.

**22. Document Request No. 31.** DRA seeks “all documents concerning TransCanada’s efforts to obtain and comply with applicable permitting.” This request is overbroad and unduly burdensome. DRA argues that it also seeks copies of permits that have been granted. A table of required permits is included in Table 1.9-1 in Section 1.9 of the FSEIS.

**23. Document Request No. 33.** DRA seeks all documents related to route deviations. Keystone produced maps showing the route changes since 2010. DRA also wants copies of notices to affected landowners, which would not be relevant or likely to lead to the discovery of admissible evidence. DRA does not explain how further information would be relevant to Keystone’s ability to meet the permit conditions.

**24. Document Request No. 34.** DRA seeks all documents concerning the appointment of a public liaison officer by TransCanada. Keystone stands on its objection. It sought approval of the public liaison officer, but the Commission made the appointment. Its process is a matter of public record, as are the liaison’s reports filed with the Commission.

**25. Document Request No. 36.** DRA seeks all documents related to efforts to comply with mitigation measures set forth in the CMR Plan. Keystone responded that until there is a Record of Decision and a Presidential Permit, the recommendations in the Final EIS are not binding on Keystone. DRA argues that the request was non-responsive. Stated differently, Keystone has

not commenced construction and there is no construction schedule. Keystone does not have documents related to compliance efforts that have not occurred.

**26. Document Request Nos. 37-38.** DRA wants all documents related to development of the Con/Rec Units required by the Commission. Keystone produced a record of its contacts with the NCRS dated June 7, 2010, and referred DRA to the completed Con/Rec Units in Appendix R of the FSEIS. DRA's argument does not explain what additional documents it seeks or how they are relevant.

**27. Document Request No. 42.** DRA wants all documents regarding consultation between Keystone and the South Dakota Department of Game, Fish, & Parks. Keystone produced a responsive summary of its contacts with SDGF&P and referred to Appendix H of the FSEIS. DRA states that this response was insufficient, but does not describe the additional documents that it wants or their relevance.

**28. Document Request No. 44.** DRA wants all documents related to compliance with construction conditions related to wetlands, water bodies, and riparian areas. Keystone responded that it has not received its permit authorization for wetland construction. That permit comes from the United States Army Corps of Engineers. Keystone's request for the permit has not been filed. Construction has not commenced. Keystone does not have documents responsive to this request.

**29. Document Request No. 46.** DRA wants all documents identifying private access roads to be used during construction. Keystone maintains that this information is confidential. It is also irrelevant to any issue in the case. Where private access roads are located does not affect Keystone's ability to meet any permit conditions. Keystone will comply with Condition No. 28 by notifying the Commission of private access roads before beginning construction.

**30. Document Request No. 48.** DRA seeks all documents related to agreements with landowners, which is overbroad. It would include all easements, all construction agreements, and all contact reports regarding the process of obtaining easements and paying for crop damages. Those documents are not relevant to the limited issues in this proceeding. Keystone has no documents related to “modifying any requirements or conditions established by the Commission,” because that has not occurred.

**31. Document Request No. 50.** DRA’s argument related to its very broad request for all documents related to assessments performed regarding High Consequence Areas and all efforts to comply with 49 CFR Part 195 reveals a fundamental misunderstanding of the Commission’s role. DRA argues that such documents are relevant because Keystone “must comply with the law,” which is a permit condition. That is true, but whether Keystone complies with the law related to High Consequence Areas and PHMSA regulations is to be determined by PHMSA, not the Commission. If Keystone fails to comply, the Commission can revoke the Permit, but the Commission is not charged with monitoring Keystone’s compliance in each instance.

**32. Document Request No. 51.** DRA asked for all documents identifying hydrologically sensitive areas as required by Condition No. 35. Keystone answered that the High Plains Aquifer in Tripp County is the only vulnerable and beneficially useful aquifer identified as being crossed by the Project in South Dakota. Keystone does not have documents specifically related to this determination, and does not know what it could produce in response to the request.

**33. Document Request No. 53.** DRA asks for all documents related to compliance with USFWS mitigation requirements and endangered species. Keystone referred DRA to the Biological Assessment and the Biological Opinion, which contain an enormous amount of

information. DRA does not explain why that information is not responsive, or what additional relevant information it hopes to obtain.

**34. Document Request No. 55.** DRA asks for all documents referencing or containing information concerning cultural or paleontological resources along the route. Keystone did not object, but answered with references to the FSEIS, including detailed South Dakota information in Table 3.11-3, and with a statement that there were no consultations with the Bureau of Land Management or the South Dakota School of Mines and Technology. Keystone did not produce the paleontological monitoring plan for South Dakota as confidential and privileged. Keystone will supplement its answer to provide a copy of the paleontological monitoring plan without the appendices, which contain location information about finds and resources. Keystone considers itself obligated to keep that data confidential for the same reasons that cultural sites are protected.

**35. Document Request No. 56.** DRA asks for the incident reports for each spill identified by Keystone in its previous production. DRA does not address the information that Keystone provided, which included a description of each leak or spill, all of which involved above-ground fittings. DRA does not explain how the incident reports are relevant given the information provided. Keystone maintains its objection.

### **Conclusion**

Keystone has provided extensive discovery to DRA and has acted in good faith. Keystone has agreed to supplement its responses as identified in this response to DRA's motion to compel, but otherwise stands on its objections. Keystone respectfully requests that DRA's motion to compel be denied.

Dated this 13<sup>th</sup> day of April, 2015.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Response to Dakota Rural Action's Motion to Compel, to the following:

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